

BERNALILLO COUNTY, NEW MEXICO

AND

VILLAGE @ LA ORILLA, LLC

LEASE AGREEMENT

Dated as of July 1, 2017

**\$4,000,000 (maximum)
Bernalillo County, New Mexico
Taxable Industrial Revenue Bond
(The Village @ La Orilla, LLC Project)
Series 2017**

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BERNALILLO COUNTY, NEW MEXICO, a New Mexico county and political subdivision as lessor acting through its Board of County Commissioners (together with its successors and assigns, the “Issuer” or the “County”), and VILLAGE @ LA ORILLA, LLC, a New Mexico limited liability company, as lessee (together with its successors and assigns, the “Company”), agree:

ARTICLE I - RECITALS

Section 1.1. Recitals.

A. The Company has presented to the Board of County Commissioners, the governing body of the Issuer (the “Board”) a proposal whereby the Issuer will acquire, construct and equip a multi-purpose restaurant, retail, entertainment and manufacturing facility to be used to provide retail, food and entertainment services to the general public, to be located in the County (the “Project”), and whereby the Issuer will issue its Taxable Industrial Revenue Bond (The Village @ La Orilla Project), Series 2017 in the maximum aggregate principal amount of \$4,000,000 (the “Bond”) to accomplish the acquisition, installation and equipping of the Project;

B. The Issuer is authorized under Section 4-59-1 to 4-59-16 New Mexico Statutes Annotated, 1978 Compilation (the “Act”), to acquire certain projects and issue its \$4,000,000 industrial revenue bond in payment therefor and has determined by Ordinance No. 2017-[__] (the “Bond Ordinance”) that it is desirable to acquire, construct, install and equip the Project and has pursuant to the Bond Ordinance authorized the issuance of the Bond;

C. The Bond is to be issued under an Indenture dated as of July 1, 2017 (together with any and all amendments and supplements, the “Indenture”) among the Issuer, Cantor Commercial Real Estate Lending, LP, a company qualified to do business in New Mexico (together with its successors and assignees, and permitted transferees of the Bond, the “Purchaser”), the Company and BOKF, N.A., as Depositary (the “Depositary”);

D. The proceeds of the Bond will be used to finance the acquisition, improvement and equipping of the Leased Property (as defined in Section 2.1);

E. The Leased Property, including the Project Site (as defined in Section 2.1), will be leased to the Company under this Lease Agreement (together with all amendments and supplements, this “Lease”);

F. The Bond is to be purchased under a Bond Purchase Agreement dated as of July 1, 2017 (together with all amendments and supplements the “Bond Purchase Agreement”) among the Issuer, the Purchaser and the Company;

G. The Issuer deems it desirable, in the best interests of its residents and in accordance with the purposes of the Act, to issue its Bond and to finance the Project for the purposes described above, pursuant to the Indenture and the Bond Ordinance;

H. The Bond will be special limited obligations of the Issuer payable as provided therein and as provided in the Indenture, and the Bond will not constitute a debt or indebtedness or pledge of the credit of the Issuer, and the Purchaser or owner of the Bond will

have no right to have taxes levied by the Issuer or to require the Issuer to use any revenues for the payment of the Bond, except for Revenues (as defined in the Indenture); and

I. The Company and the Issuer each have full right and lawful authority to enter into this Lease and to perform and observe the provisions hereof on their respective parts to be performed and observed.

In consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Lease will never constitute an indebtedness of the Issuer or give rise to any pecuniary liability of the Issuer or charge against its general credit or taxing powers, but will be payable solely out of Revenues).

ARTICLE II - DEFINITIONS AND RULES OF CONSTRUCTION

Section 2.1. Definitions. All words and terms defined in the Indenture have the same meanings when used in this Lease, and undefined words and terms in Section 1.1 above and the following terms shall have, except where the context indicates otherwise, the respective meanings set forth below.

“Additional Payments” has the meaning assigned in Section 5.3 B.

“Applicable Environmental Law” means any applicable law, statute, regulation, order or rule pertaining to health or the environment, including, without limitation, CERCLA and RCRA, as each is amended and in effect from time to time.

“Basic Rent” has the meaning assigned in Section 5.3 A.

“Bond Documents” means collectively, this Lease, the Indenture and the Bond Purchase Agreement.

“Board” means the Board of County Commissioners of Bernalillo County, New Mexico.

“Business Day” has the meaning assigned in the Indenture.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“Company Financing” means a transaction or series of transactions involving credit agreements, loan documents, letters of credit, or other instruments evidencing financial obligations to which the Company or any subsidiary or affiliate of the Company is a party, entered into or occurring at any time prior to the Closing Date (as defined in the Bond Purchase Agreement) or during the Term and after the date of initial delivery of the Bond, for the purpose of obtaining financing or refinancing any existing financing, for the use by the Company or any subsidiary or affiliate of the Company, together with any Company Financing Lien.

“Company Financing Lien” means any mortgage, pledge, encumbrance or other lien on all or any portion of the Leased Property entered into in connection with a Company Financing.

“Completion Date” has the meaning assigned in Section 4.3.

“Eminent Domain” means the taking of title to, or the temporary use of, all or any part of the Leased Property pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Leased Property during the pendency of, or as a result of a threat of, such proceedings.

“Equipment” means all equipment, fixtures and furnishings and all personal property of any kind, which is to be acquired and used on or at the Project Site, which is suitable for the Project, and which is subject to depreciation for federal income tax purposes, and that is purchased with proceeds of the Bond, or the purchase of which is reimbursed with proceeds of the Bond, together with fixtures, furnishings and other depreciable personal property that are in replacement thereof due to damage or obsolescence.

“Event of Default” has the meaning assigned in Section 7.1.

“Improvements” means all buildings, structures and other improvements to be constructed and installed on the Project Site in connection with the Project, together with necessary site work, and the Equipment.

“Indemnatee” means the Indemnified Persons and Indemnified Parties as defined in Section 5.7.

“Inducement Resolution” means Resolution No. AR 2017-[] adopted by the Board on May 23, 2017 in connection with the issuance of the Bond.

“Issuance Costs” means items of expense payable or reimbursable directly or indirectly by the Issuer or the Company and related to the authorization, sale and issuance of the Bond and authorization and execution of this Lease, which items of expense shall include, but are not be limited to, application fees and expenses, publication costs, printing costs, costs of reproducing documents, filing and recording fees, bond counsel and Company counsel fees, initial fees of the Depositary, charges for execution, transportation and safekeeping of the Bond and related documents, and other costs, charges and fees in connection with the foregoing.

“Leased Property” means the Improvements and the Project Site.

“Permitted Liens” means, as of the date of delivery of this Lease, the liens and encumbrances shown on **EXHIBIT B** attached hereto and, as of any particular time, (i) liens for taxes and special assessments, if any, to the extent permitted in Section 4.8, (ii) this Lease, any assignment or lease permitted by this Lease and the Indenture, (iii) easements, licenses, rights-of-way and other rights or privileges in the nature of easements, if any, to the extent permitted in Section 4.16; (iv) mechanics’, materialmens’, carriers’ and other similar liens, (v) any Company Financing Lien, and (vi) such minor defects, irregularities, encumbrances, or other liens on the Leased Property as normally exist with respect to similar properties and as do not, individually or

in the aggregate, materially impair the Leased Property for the purpose for which it is used by the Company or materially detract from the value of the Leased Property.

“Person” means any natural person, firm, partnership, association, corporation, limited liability company, trust, or public body.

“Proceeds,” when used with respect to any insurance proceeds or any award resulting from, or other amount received in connection with, Eminent Domain, means the gross proceeds from the insurance or such award or other amount.

“Project” means the acquiring, installing and equipping on the Project Site of a facility to be used by the Company to provide retail, food and entertainment services to the general public and other improvements related thereto.

“Project Site” means the real property located at 12809 Donette Court NE, Albuquerque, New Mexico, 87112 in Bernalillo County, New Mexico where the Improvements are to be located, as more specifically described on **EXHIBIT A** attached hereto.

“RCRA” means the Resource Conservation and Recovery Act of 1976.

“Rent” means Basic Rent and any Additional Payments.

“Term” means the period from the date of the execution and delivery of this Lease by the Issuer and the Company to the earlier of the date of payment of the Bond, the date of termination of this Lease pursuant to Section 7.2 C, or July 1, 2032.

“TRD” means the New Mexico Taxation and Revenue Department.

Section 2.2. Rules of Construction.

A. The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

B. All references in this Lease to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Lease unless some other reference is established.

C. Any inconsistency between the provisions of this Lease and the provisions of the Indenture will be resolved in favor of the provisions of the Indenture.

ARTICLE III - REPRESENTATIONS

Section 3.1. Representations by the Issuer. The Issuer makes the following representations as the basis for the undertakings on its part herein contained:

A. The Issuer is a county and political subdivision organized and existing under and pursuant to the laws of the State of New Mexico (“State”) and is authorized by the Act to acquire, own, lease or sell projects for the purpose of promoting industry and trade by

inducing manufacturing, industrial and commercial enterprises to locate or expand in the State, and promoting a sound and proper balance in the State between agriculture, commerce and industry. Under the Act, the Issuer has the power to enter into the transactions contemplated by this Lease, the Indenture and the Bond Purchase Agreement and to carry out its obligations hereunder and thereunder. The Project constitutes and will constitute a “project” within the meaning of the Act. By proper action, the Issuer has duly authorized the execution and delivery of this Lease, the Indenture and the Bond Purchase Agreement.

B. The Issuer will lease the Leased Property to the Company and will sell the Leased Property to the Company upon the Company’s exercise of its option to purchase the Leased Property, all for the purpose of promoting industry and trade by inducing the Company to locate the Project in the State and to promote a sound and proper balance in the State between agriculture, commerce and industry. The Issuer agrees to cooperate with the Company to procure from the appropriate State, county, municipal and other authorities and corporations utility connection and discharge arrangements for the adequate supply of water, gas, electricity, sewage, and other services for the operation of the Leased Property.

C. To finance the Costs of the Project, the Issuer will issue the Bond. The Bond shall mature, bear interest and have such other terms and conditions as are set forth in the Indenture.

D. The Bond is to be issued under and secured by the Indenture, pursuant to which certain of the Issuer’s interests in this Lease (with certain exceptions) and the revenues and receipts derived by the Issuer from the leasing or sale of the Project (with certain exceptions) will be pledged and assigned to the Purchaser as security for payment of the principal of, premium, if any, and interest on the Bond.

E. The execution, delivery and performance of the Issuer of the Bond Documents will not conflict with or create a material breach of or material default under the Act or any other law, rule, regulation or ordinance applicable to the Issuer or any agreement or instrument to which the Issuer is a party or by which it is bound, and there is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body, pending or, to the best knowledge of the Issuer threatened, against the Issuer, which seeks to or does restrain or enjoin the issuance and delivery of the Bond or the execution and delivery of any of the Bond Documents or in any manner questions the validity or enforceability of the Bond or any of the Bond Documents.

Section 3.2. Company Representations. The Company represents that, as of the date of delivery of this Lease:

A. The Company is a Delaware limited liability company qualified to conduct business and in good standing under the laws of the State, and has duly authorized the execution, delivery and performance of this Lease, the Indenture, and the Bond Purchase Agreement.

B. The execution, delivery and performance by the Company of this Lease, the Indenture, and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under its organizational documents or the bylaws or any law,

rule, regulation, ordinance, order, consent, decree, or any material agreement or instrument to which the Company is a party or by which it or its properties or the Leased Property is bound.

C. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of this Lease, the Indenture, and the Bond Purchase Agreement have been obtained or will be obtained prior to issuance of the Bond.

D. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the knowledge of the Company, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bond or the execution and delivery of this Lease, the Indenture, or the Bond Purchase Agreement, (ii) in any manner questions the validity or enforceability of the Bond, this Lease, the Indenture, or the Bond Purchase Agreement, or (iii) questions the authority of the Company to own or operate the Leased Property.

E. The agreement by the Issuer to issue the Bond and to lease the Leased Property to the Company has induced the Company to undertake the Project and to conduct its business in Bernalillo County, New Mexico.

F. The Company intends to operate or to cause the Leased Property to be operated so as to qualify as a “project” as defined in the Act to the later of the payment in full of the principal of, premium, if any, and interest on the Bond and the expiration or early termination of the Term of this Lease as provided herein as a facility for the provision of retail, food and entertainment services to the general public so as to qualify the Improvements, as applicable, for the deduction from gross receipts tax or governmental gross receipts tax and the exemption from compensating tax pursuant to 3.2.212.22 NMAC.

G. As agent for the Issuer, the Company proposes to acquire the Improvements which the Company intends to qualify for the tax-exemptions pursuant to 3.2.212.22 NMAC. The Company shall have the sole responsibility for the acquisition, installation and equipping of the Improvements, and may perform the same, by itself or through affiliates, agents, contractors, subcontractors or others selected by it, in whatever lawful manner it deems necessary or advisable. With respect to such construction, the Company shall procure from the appropriate State, county, municipal and other authorities and corporations, utility connection and discharge arrangements for the adequate supply of water, gas, electricity, sewage other services for the operation of the Project.

H. None of the proceeds of the Bond will be used to provide working capital.

I. The Improvements will be located on the Project Site which is within the boundaries of the Issuer.

J. This Lease will serve as a financing agreement from which revenues will be derived for the purpose of providing payment for the account of the Issuer of such amounts as will be sufficient to pay the principal of, premium, if any, and interest on the Bond, and providing that the Company shall be obligated to pay for the maintenance of and insurance or meet self insurance requirements on the Project as required by the Act.

K. The Company represents to the Issuer that the Company has the economic ability to meet all of the financial obligations imposed upon the Company under this Lease.

L. No officer or other official of the Issuer has any interest of any kind in the Company which would result, as a result of the issuance of the Bond, in a substantial financial benefit to such persons other than as a member of the general public of the State.

M. The Company has heretofore supplied the Issuer estimates of the Costs of the Project and the Completion Date. The Company hereby warrants that the estimates for the Project were made in good faith and are fair, reasonable and realistic but are subject to revision as the Project is acquired, constructed and installed due to foreseen and unforeseen circumstances.

N. The Company shall cause to be paid all costs of the Project in excess of the moneys available therefor in the Acquisition Account.

O. No event has occurred and no condition exists with respect to the Company that would constitute an "Event of Default" under this Lease or that, with the lapse of time or the giving of notice or both, would become an "Event of Default" under this Lease.

ARTICLE IV - THE PROJECT

Section 4.1. Acquisition, Installation, Equipping and Completion. The Company will, on behalf of and as agent of the Issuer, acquire, construct, install and/or equip the Leased Property and will undertake to complete the Project with all reasonable dispatch. On or prior to the date of issuance and delivery of the Bond and execution of this Lease, the Company has conveyed or caused to be conveyed to the Issuer, by deed, bill of sale or such other appropriate transfer or conveyance documents as will vest title in the Issuer ("Conveyancing Documents"), to all of the Company's interest in the Project Site and any and all Improvements as may exist at that time and thereafter the Company shall transfer legal title to each additional relevant portion of the Improvements acquired by the Company as agent for the Issuer so that legal title will vest in the Issuer pursuant to the Conveyancing Documents that the Company may subsequently deliver to the Issuer. All Improvements shall be paid out of proceeds of the Bond to appropriate vendors or on a reimbursement basis to the Company pursuant to Section 6.02 of the Indenture. To the maximum extent reasonably possible, the Company will cause the Project to be completed with proceeds of the issuance of the Bond and the Company will use its best reasonable efforts to cause the Purchaser to carry out its obligations to make advances under the Bond. To the extent necessary, after proceeds of the Bond have been exhausted, the Company will cause the Project to be completed with its own funds or other resources.

Section 4.2. Plans and Specifications; Changes. The Company will maintain a set of plans and specifications for the Project at the Project Site during the period of construction and equipping which will be available to the Issuer and the Purchaser for inspection and examination during the Company's regular business hours. The Company may change, supplement, amend and add to such plans and specifications and is authorized to omit or make substitutions for components of the Leased Property without the approval of the Issuer or the

Purchaser. The Company will not make any changes that will change the nature of the Project as a qualified “project” as defined in and as contemplated by the Act.

THE COMPONENTS OF THE LEASED PROPERTY HAVE BEEN DESIGNATED AND SELECTED BY THE COMPANY. THE ISSUER HAS NOT MADE AN INSPECTION OF ANY PORTION OF THE LEASED PROPERTY. THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO ANY PORTION OF THE LEASED PROPERTY OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY OF THE SAME, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE SAME. ALL RISKS INCIDENT TO THE LEASED PROPERTY ARE TO BE BORNE BY THE COMPANY. THE ISSUER WILL HAVE NO LIABILITY WITH REGARD TO OR ARISING OUT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN ANY PORTION OF THE LEASED PROPERTY, WHETHER PATENT OR LATENT. THE PROVISIONS OF THIS SECTION 4.2 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE LEASED PROPERTY, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

Section 4.3. Completion Date. On the date the Project is complete in the sole opinion of the Company (the “Completion Date”), the Company will deliver to the Issuer and the Depositary a certificate signed by an Authorized Company Representative stating that, except for specified amounts remaining in the Acquisition Account for any specified Costs of the Project incurred by the Company but not then due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project have been paid for or provisions have been made for their payment. The Company will cause the Completion Date to occur not later than [July 22, 2017]. After the transfer of remaining moneys in the Acquisition Account to the Company pursuant to Section 6.05 of the Indenture, the Company will have sole responsibility for the payment of any Costs of the Project in excess of the amount specified to be retained in the Acquisition Account.

Section 4.4. Gross Receipts and Compensating Tax.

A. The Company, either on its own behalf or as agent for the Issuer pursuant to Section 4.1 and this Section 4.4, will file returns for reporting and paying compensating tax which is due because of the Project and will pay any gross receipts or compensating tax due from the Issuer under any such returns. The Issuer, at the request of the Company, or the Company, as agent for the Issuer, will apply to the TRD for nontaxable transaction certificates (as such term is used in the Gross Receipts and Compensating Tax Act, Chapter 7, Article 9, NMSA 1978, as amended) (“Nontaxable Transaction Certificates”). Nontaxable Transaction Certificates shall be executed and delivered by the Company, as agent for the Issuer, to vendors, in order to permit the vendors to claim deductions available under the New Mexico Gross Receipts and Compensating Tax Act for the vendors’ receipts from the Company, as agent for the Issuer, for sales of the Improvements. The Company will promptly pay any gross receipts or compensating tax plus applicable penalty and interest that is found by the TRD to be due from the Company or

the Issuer with respect to the Project. The Company, at its sole expense, may request any rulings from the TRD which the Company determines may be necessary or desirable to clarify the New Mexico gross receipts and compensating tax implications of transactions related to the Improvements and may dispute, at its sole expense, in any manner authorized by the New Mexico Tax Administration Act or other applicable procedures, any gross receipts or compensating tax liability imposed on the Company or the Issuer because of the Project, provided the Company shall not pursue a dispute without notice to the Issuer and shall not pursue any dispute that, in the reasonable opinion of the Issuer, will materially and adversely affect the interest or rights of the Issuer. The Issuer specifically acknowledges that since the adoption of the Inducement Resolution, an agency relationship for purposes of the gross receipts tax deduction under Section 7-9-54 NMSA 1978, as amended, and applicable regulations has existed between the Issuer and the Company with respect to the Project. The Issuer agrees, at the request and expense of the Company, to make reasonable modifications to this Lease that are necessary or desirable to obtain Nontaxable Transaction Certificates or otherwise reduce the gross receipts and compensating tax imposed upon the Company or the Issuer as a result of the Project or its operation.

B. The Company has advised the Issuer and it is intended by the parties hereto that the receipts of vendors from the sale of tangible personal property to the Issuer, which tangible personal property (i) is included in the Improvements (but excluding “construction material”, as defined in Section 7-9-3.4(B) NMSA 1978, as amended) and (ii) is purchased with proceeds of the Bond on or prior to the Completion Date, shall be deductible from gross receipts or governmental gross receipts, and exempt from compensating tax, to the fullest extent permitted by Sections 7-9-14 and 7-9-54 NMSA 1978, as amended, and 3.2.212.22 NMAC. The deduction from gross receipts or governmental gross receipts, and the exemption from compensating tax, shall not apply to purchases of Improvements except as provided in the preceding sentence, and, except as contemplated in the preceding sentence, the Company shall not be authorized by this Lease to provide Nontaxable Transaction Certificates to vendors.

Section 4.5. Assessment in the Company’s Name. If this Lease has not been terminated on or before July 1, 2032 and if the Leased Property was not assessed during the Term, the Company (which, for purposes of this Section 4.5, means the then current lessee of the Leased Property under this Lease) will take all necessary action to have the Leased Property assessed for property tax purposes in the name of the Company on January 1, 2033, and the Company (or, if the Issuer does not hold title to the Leased Property, the holder of such title) will pay all ad valorem taxes on the Leased Property from and after January 1, 2033.

Section 4.6. Compliance with Law. The Company will obtain or cause to be obtained all necessary permits and approvals for the operation and maintenance of the Leased Property, will comply with all lawful requirements of any governmental body, agency or department regarding the use or condition of the Leased Property and will cause the Leased Property, upon completion, to comply with all applicable restrictive covenants and all other applicable laws, ordinances, statutes, rules and regulations relating to the Leased Property as a whole. The Company may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.6 will be deemed satisfied with respect to the requirement so contested.

Section 4.7. Nuisance Not Permitted. The Company will not permit or suffer its agents, employees, invitees (including building contractors and subcontractors), guests or other visitors to commit a nuisance on or about the Leased Property or itself commit a nuisance in connection with its use or occupancy of the Leased Property.

Section 4.8. Taxes and Utility Charges. The Company will pay, as and when due, (i) all taxes, assessments and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Property; (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Leased Property and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Leased Property. The Company may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings. During the period of such contest and any related appeal, this Section 4.8 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested.

Section 4.9. Maintenance. The Issuer will not be under any obligation to, and will not, operate, maintain or repair the Leased Property. During the Term of this Lease, the Company will, in its discretion and at its own expense, keep the Leased Property in safe repair and in such operating condition as is needed for its operations and make all necessary repairs and replacements to the Leased Property (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) as determined in the Company's sole discretion.

Section 4.10. Replacement and Removal of Leased Property. The Company may replace or remove any Equipment or, with the prior written consent of the Issuer (which consent shall not be unreasonably withheld, conditioned or delayed), real property constituting a part of the Leased Property and thereby acquire title to such Equipment or real property, provided that such replacement or removal will not change the nature of the Project as a qualified "project" as defined in and as contemplated by the Act. Upon request of the Company, the Issuer will deliver to the Company appropriate instruments evidencing the acquisition by the Company of title to any Equipment or real property permitted by this Section 4.10 to be so replaced or removed. The provisions of Article IX govern the delivery and form of any such instruments.

Section 4.11. Eminent Domain; Damage; Destruction. The Company will give prompt notice to the Issuer and the Purchaser of any material damage to or destruction of the Leased Property. If either the Issuer or the Company receives notice of the proposed taking of all or any part of the Leased Property by Eminent Domain, it will give prompt notice to the other and the Purchaser. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Leased Property will be paid to the Company.

Section 4.12. Insurance. The Company will keep the Leased Property continuously insured against such risks and in such amounts, with such deductible provisions, as are reasonable and customary as determined by the Company in connection with the type and size of the Leased Property. Each property insurance policy will show the Company as loss payee and each commercial general liability insurance policy will show the Company as loss

payee and the Issuer as an additional insured, under such policies. Such insurance may, to the extent permitted under applicable law, be provided by blanket policies maintained by the Company, by a captive insurance company controlled by the Company or through self-insurance. Such insurance will include general liability insurance against liability for claims for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Leased Property. The Company shall also comply with the workers' compensation laws of the State (unless the Company has complied with the requirements of the laws of the State for self-insurance).

Section 4.13. Access and Inspection. Subject to the reasonable security and safety requirements of the Company and with reasonable advance notice to the Company, during the Term of this Lease, the Company will give the Issuer, the Purchaser and their duly authorized agents during regular business hours (i) such rights of access to the Leased Property as may be reasonably necessary to inspect the progress of the Project and (ii) the right of entry onto the Leased Property as a whole for any purpose contemplated by this Lease. The Company will execute, acknowledge and deliver all such further documents, including any easement, and do all such other acts and things as may be necessary in order to grant to the Issuer and the Purchaser such rights of access and entry. During the Term of this Lease, such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Leased Property by the Company to any other Person.

Section 4.14. Liens. Except for Permitted Liens, the Company will not suffer any material liens to exist on the Leased Property as a result of any claims brought against the Company pursuant to a right or interest not existing in connection with, or permitted by, this Lease. The Company will notify the Issuer and the Purchaser of the existence of any lien, other than a Permitted Lien, on the Leased Property within 60 days after such lien attaches. The Company may, in good faith, contest the validity of any lien on the Leased Property. During the period of such contest and any related appeal, this Section 4.14 will be deemed satisfied with respect to the lien so contested.

Section 4.15. Use of Leased Property. The Company will use the Leased Property continuously during the Term so as to constitute a "project" within the meaning of the Act as in effect on the date of issuance of the Bond. As used in the first sentence of this Section 4.15, "continuously" means regularly and on a schedule consistent with that of similar facilities in the United States. Temporary cessation of operations during holiday periods, for maintenance, retooling, renovation or redevelopment of the Project, during reasonable periods for the repair or replacement of Leased Property damaged or destroyed, resulting from labor disputes or due to market disruptions or acts of terrorism or under similar circumstances will not constitute a failure by the Company to comply with this Section 4.15.

Section 4.16. Easements. The Company may at any time or times grant easements, licenses, rights-of-way and other rights or privileges in the nature of easements with respect to any part of the Leased Property or the Project Site and the Company may release existing interests, easements, licenses, rights-of-way and other rights or privileges with or without consideration. The Issuer will join in any such grant or release at the reasonable request and expense of the Company upon receipt by the Issuer of a certificate executed by an officer of the Company stating (i) that such grant or release is not detrimental to the proper conduct of the

business of the Company, and (ii) that such grant or release will not impair the effective use or interfere with the operation of the Leased Property.

Section 4.17. Local Hiring. The Company agrees to offer appropriate positions for the operation of the Project to qualified applicants residing in the County where such applicants possess qualifications for such positions equal to or greater than the qualifications of other applicants who might exist at the time of hiring. The Company anticipates that a significant number of employees for the operation of the Project will be hired from the County area.

Section 4.18. Local Purchasing. The Company agrees that a reasonably significant proportion of all costs of labor, services, materials and supplies in connection with the acquisition, construction, equipping and operation of the Project will continue to be expended with vendors based within the County, and that vendors based within the County will continue to be awarded no less than 100% of the total aggregate value of all contracts for labor and services entered into by the Company in connection with the acquisition, construction and equipping of the Project during the Construction Period.

Section 4.19. Performance Clawback.

A. If the number of full time equivalent employees attributable to the Project is less than 120 (Projected FTE Employees stated in application) (the “Employment Target”) on the first December 31 following the Completion Date and every December 31 thereafter (each a “Performance Date”) as set forth in the annual report of the Company to the Issuer pursuant to Section 4.20, then the Company may be required to pay to the Issuer, no later than the end of the calendar year immediately following the calendar year in which the Performance Date occurs (each a “Performance Year”), an amount not exceeding (i) that percentage (shown below corresponding to the percentage of the Employment Target that the Company actually employed on the pertinent Performance Date) (the “Employment Target Applicable Percentage”) of the ad valorem taxes on real and personal Leased Property that the Company would have been required to pay with respect to the Performance Year if the Bond had not been issued by the Issuer and the Leased Property had been subject to ad valorem taxation, calculated using mill levies and actual property tax valuations and rates for the Performance Year, plus (ii) the Employment Target Applicable Percentage of the amount of gross receipts tax that would have been payable by vendors of Leased Property with respect to the Performance Year if the Bond had not been issued and receipts from sales of Leased Property had not been deductible from gross receipts of the vendors plus (iii) the Employment Target Applicable Percentage of the amount of compensating tax that would have been payable (arising from liability incurred in the Performance Year) by the Company with respect to Leased Property if the Bond had not been issued.

Percentage of Employment Target

Applicable Percentage

Less than 70%	100%
70% or more but less than 80%	20%
80% or more but less than 90%	10%

90% or more

0%

B. The Company acknowledges that it has projected wage rates with respect to the categories of jobs to be attributed to the Project, as follows:

<u>Job Category</u>	<u>Average Starting Wage</u>	<u>Pay Range</u>
Hourly	Servers: \$2.15/hour, plus tips; Bar personnel and runners: \$5.50/hour plus tips	\$2.15-5.50/hour plus tips
Salaried Operations	Assistant Managers: \$32,000/year; General Managers: \$75,000/year	\$32,000-75,000/year
Other Non-Executive	Hosts: \$16,640/year; Supervisors: \$29,250/year	\$16,640-29,250/year

If, on the first Performance Date and each Performance Date thereafter, the wages actually paid to such employees, as set forth in the annual report of the Company to the Issuer pursuant to Section 4.20 are less than projected above in any category (each a “Projected Wage”), then the Company shall be required to pay to the Issuer, no later than the end of the calendar year immediately following the applicable Performance Year, an amount not exceeding (i) that percentage (shown below corresponding to the percentage of the Projected Wage for the applicable Performance Date) (the “Projected Wage Applicable Percentage”) of the ad valorem taxes on real and personal Leased Property that the Company would have been required to pay with respect to the Performance Year if the Bond had not been issued by the Issuer and the Leased Property had been subject to ad valorem taxation, calculated using mill levies and actual property tax valuations and rates for the Performance Year, plus (ii) the Projected Wage Applicable Percentage of the amount of gross receipts tax that would have been payable by vendors of Leased Property with respect to the Performance Year if the Bond had not been issued and receipts from sales of Leased Property had not been deductible from gross receipts of the vendors, plus (iii) the Projected Wage Applicable Percentage of the amount of compensating tax that would have been payable (arising from liability incurred in the Performance Year) by the Company with respect to Leased Property if the Bond had not been issued.

<u>Percent of Projected Wage</u>	<u>Applicable Percentage</u>
90% or more	0
80% or more but less than 90%	10%
70% or more but less than 80%	20%
less than 70%	100%

C. The Issuer acknowledges that the purpose of this Section 4.19 is not to penalize the Company for business conditions or events that are outside the control of the Company. Performance will be measured annually and compared to projections and provisions of this Agreement by the Issuer's Economic Development Department or a third party independent contractor. In the event the reviewer determines the actual values are substantially less than those projected, then the Issuer may exercise its rights to impose a clawback as provided in this section. In the event the Company subsequently cures the shortfall, the abatement will be restored prospectively.

D. Notwithstanding anything to the contrary in this Lease, the total amount required to be paid by the Company to the Issuer pursuant to Sections 4.19 and 5.9 with respect to any applicable period (e.g., calendar year, time from the adoption of the inducement resolution forward to a particular date, or other period, as applicable) shall not exceed the total amount of exempted ad valorem, gross receipts and compensating taxes that would have been due to all taxing authorities from the Company and its vendors in connection with the Leased Property with respect to such applicable period if the Bond had not been issued.

Section 4.20. Annual Report The Company agrees to submit to the Issuer's Economic Development Department on an annual basis beginning no later than March 31, 2018 and each March 31 thereafter a report (i) containing a certificate signed by an Authorized Company Representative stating the number of full time equivalent employees, if any, attributable, to the Project, setting forth the classifications of such employees, and setting forth the wages actually paid to such employees; provided that where such full time employees are attributable to the operations of tenants of the Company at the Leased Property, the Company may rely on certifications of such tenants as to the information required by this subsection and shall include such certifications as part of the report required by this Section; (ii) describing actions taken by the Company in the preceding calendar year with regard to Section 4.19 of this Lease; (iii) describing any economic benefits arising out of the Project for the benefit of the Issuer or its residents, as well as information pertaining to the good standing of the Company with the State of New Mexico; (iv) describing the extent of the Company's compliance with the provisions of Sections 4.17 and 4.18 of this Lease, including, to the extent available and not subject to legal limitations on disclosure, demographic data for new hires by the Company or by tenants of the Company at the Leased Property; and (v) to the extent that the economic projections for the Project in the industrial revenue bond application submitted to the Issuer vary significantly from actual economic performance, the Company's explanation of the variance.

ARTICLE V - LEASE; TERM; POSSESSION; RENT
INDEMNIFICATION; COUNTY PAYMENT

Section 5.1. Lease of the Leased Property; Term. In consideration of the payment of Rent and for other good and valuable consideration, the Issuer leases the Leased Property, to the extent acquired by the Issuer, to the Company for the Term.

Section 5.2. Quiet Enjoyment. The Issuer will not take any action, other than pursuant to Section 4.13 or Article VII, to prevent the Company from having quiet and peaceable possession and enjoyment of the Leased Property during the Term (except as necessary with respect to Eminent Domain for public projects and purposes) and will, at the request of the Company and at the Company's expense, to the extent the Issuer may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

Section 5.3. Rent.

A. The Company will pay to the Purchaser for the account of the Issuer, such amounts at such times as are necessary to make all payments of principal of, interest on and any redemption price of the Bond in accordance with the terms of the Bond and the Indenture as and when due (collectively, the "Basic Rent");

B. The Company will also make the following payments (the "Additional Payments" and, together with the Basic Rent, the "Rent"):

(i) to or on behalf of the Depositary, the reasonable fees and charges of the Depositary for all services of the Depositary, and all reasonable expenses (including reasonable counsel fees and expenses) incurred by the Depositary in connection with its duties under the Indenture, if scheduled, when due and, otherwise, promptly on demand by the Depositary, which fees, charges and expenses may be more specifically determined by an agreement between the Depositary and the Company; and

(ii) to or on behalf of the Issuer, all reasonable out-of-pocket costs and expenses (including, but not limited to, reasonable counsel fees and expenses) incurred by the Issuer in connection with the issuance of the Bond and the performance of its duties under this Lease and the Indenture, promptly on demand of the Issuer.

Section 5.4. Obligations Unconditional. The obligation of the Company to pay Rent and to perform its other obligations under this Lease is absolute and unconditional and will not be subject to diminution by setoff, counterclaim, abatement or otherwise, whether as a result of damage to or destruction of or removal of all or any portion of the Leased Property or any other event or condition. In the event the Issuer fails to perform any of its obligations under this Lease, the Company, at its own cost and expense, may institute such action against the Issuer as the Company may deem necessary to compel such performance. The Company may also, at its own cost and expense and in its own name or, if legally necessary, in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving third parties which the Company deems reasonably necessary in order to secure or protect its title to or its right of possession and use of the Leased Property. In such event, if no Event of Default has occurred and is continuing, the Issuer will cooperate with the Company, so long as it is not the

adverse party, upon receipt of indemnity satisfactory to the Issuer against any out-of-pocket cost, expense (including reasonable counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

Notwithstanding the above paragraph, it is the intention of this Lease that the Company shall make payments to the Purchaser for the account of the Issuer, in such amounts and at such times as are necessary to make all payments of principal of, interest on and redemption price of the Bond in accordance with the terms of the Bond Documents as and when due. The Purchaser will look only to the Company for payment of the Bond and upon the security granted in the Indenture for the Company's obligations under this Lease. As described in Section 6.1 hereof and Section 3.01 of the Indenture, the Issuer will assign and pledge to the Purchaser all right, title and interest of the Issuer in and to this Lease including the right to receive payments hereunder, excluding the Issuer's rights under Sections 5.3 B(ii), 5.7, 5.8 and 5.9 hereof and any other provision hereof which requires payment, indemnification and reimbursement to the Issuer.

Section 5.5. Recording and Filing; Further Assurances. The Issuer and the Company will, at the direction of the Purchaser and at the expense of the Company, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interests of the Issuer and the Purchaser in and to the Rent and in the Leased Property, including, without limitation, the recordation of this Lease and the Indenture, the filing of financing statements and continuation statements, the amendment of this Lease to include additional property in the Leased Property and the execution, acknowledgement, delivery, filing and recordation of any other necessary agreements and instruments. The Issuer will execute such instruments as may be reasonably requested by the Company to permit compliance with this Section 5.5.

Section 5.6. Claims. The Company will pay and discharge and will indemnify and hold harmless the Issuer from (i) any lien or charge upon payments by the Company to, or for the account of, the Issuer under this Lease and (ii) any taxes, assessments, impositions and other charges in respect of the Leased Property. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer will give prompt notice to the Company, and the Company will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

Section 5.7. Indemnity, Expenses.

A. To the extent not caused or occasioned by the gross negligence or willful misconduct of the Indemnified Persons or any Indemnified Person (as such terms are defined below), the Company shall indemnify and hold the Issuer and its governing body, officers, agents, and employees (hereinafter, the "Indemnified Persons" or "Indemnified Person") harmless from and against any and all claims, damages, demands, expenses, liabilities and losses of every kind, character and nature asserted by or on behalf of any person in connection with (i) the issuance, offering, sale, delivery, or remarketing of the Bond, the Indenture and this Lease and the obligations imposed on the Issuer hereby and thereby; or the acquisition, equipping, operation, use, occupancy, maintenance, or ownership of the Leased Property; (ii) any written

statements or representations made or given by the Company or any of its officers or employees to the Indemnified Persons or an Indemnified Person with respect to the Company, the Leased Property, or the Bond, including, but not limited to, statements or representations of facts, financial information, or corporate affairs or any breach or default on the part of the Company in the performance of any representation, covenant or agreement of the Company under this Lease, or any related document, or arising from any acts or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (iii) damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Leased Property; and (iv) any loss or damage incurred by the Issuer as a result of violation by the Company of the provisions of Section 3.2, or arising out of, resulting from, or in any way connected with, the condition, use, possession, conduct, management, planning, design, acquisition, construction, equipping and renovation or sale of the Leased Property or any part thereof. The Company also covenants and agrees, at its expense, to pay, and to indemnify the Indemnified Persons from and against, all costs, reasonable attorney fees, expenses and costs incurred in any suit, action or proceeding brought by reason of any such claim.

If any such suit, action or proceeding is brought against the Issuer or any other Indemnified Person, the Issuer or such Indemnified Person shall, within ten (10) days of being notified of such suit, action or proceeding against it, notify the Company, in writing, and the Company shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company and approved in writing by the Issuer or such Indemnified Person (provided that such approval by the Issuer or such Indemnified Person shall not be unreasonably withheld, conditioned or delayed), the payment of all reasonable expenses of such counsel and the right of the Issuer or such Indemnified Person to participate in negotiations and to consent to settlement, which consent shall not be unreasonably withheld, conditioned or delayed. If the Issuer or such Indemnified Person is advised in a written opinion of counsel that is also addressed to the Company that there may be legal defenses available to the Issuer or such Indemnified Person which are adverse to or in conflict with those available to the Company, or that the defenses of the Issuer or such Indemnified Person should be handled by separate counsel, the Company shall not have the right to assume or cause the assumption of the defense of the Issuer or such Indemnified Person, however, the Company shall be responsible for the reasonable fees and expenses of counsel retained by the Issuer or such Indemnified Person in assuming its own defense, provided such counsel is approved in writing by the Company.

If the Company shall have failed to assume or cause the assumption of the defense of such suit, action or proceeding or to retain counsel reasonably satisfactory to the Issuer or any Indemnified Person, the reasonable fees and expenses of counsel retained by the Issuer or such Indemnified Person shall be paid by the Company. Notwithstanding, and in addition to, any of the foregoing, the Issuer or any Indemnified Person shall have the right to employ separate counsel with respect to any such claim or in any such suit, action or proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by the Issuer or the Indemnified Person unless the employment of such counsel has been specifically authorized in writing by the Company. The Company shall not be liable for any settlement of any such suit, action or proceeding effected without the written consent of the Company, but if settled with the written consent of the Company or if there is a final judgment for the plaintiff in any such suit, action or proceeding with or without consent, and after all appeals have been taken and final orders or dismissals entered, the Company agrees to indemnify and hold harmless the Issuer or

such Indemnified Person from and against any loss or liability by reason of such settlement or judgment other than a judgment merely confirming a settlement entered into without the written consent of the Company.

As an inducement to the Depositary to enter into the Indenture, the Company also agrees to pay and to indemnify and hold harmless the Depositary, any person who “controls” the Depositary within the meaning of Section 15 of the Securities Act of 1933, as amended, and any member, officer, agent, director, official and employee of the Depositary (collectively called the “Indemnified Parties”) from and against any and all claims, fines, penalties, damages, demands, expenses, (including out-of-pocket and incidental expenses and legal fees, including the allocated costs and expenses of in-house counsel and legal staff) liabilities and losses of every kind, character and nature (“Losses”) asserted by or on behalf of any person in connection with (i) the issuance, offering, sale, delivery, or remarketing of the Bond, the Indenture and this Lease and the obligations imposed on the Depositary hereby and thereby; or the acquisition, equipping, operation, use, occupancy, maintenance, or ownership of the Leased Property; (ii) any written statements or representations made or given by the Company or any of its officers or employees to the Indemnified Parties, with respect to the Company, the Leased Property, or the Bond, including, but not limited to, statements or representations of facts, financial information, or corporate affairs; (iii) damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Leased Property; (iv) any loss or damage incurred by the Depositary as a result of violation by the Company of the provisions of Section 3.2, or arising out of, resulting from, or in any way connected with, the condition, use, possession, conduct, management, planning, design, acquisition, equipping and renovation or sale of the Leased Property or any part thereof; and (v) the execution of and performance of its duties under the Indenture, to the extent not caused or occasioned by the gross negligence or willful misconduct of an Indemnified Party. The Company also covenants and agrees, at its expense, to pay, and to indemnify the Indemnified Parties from and against, all costs, reasonable attorney fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim, to the extent not caused or occasioned by the gross negligence or willful misconduct of such Indemnified Party. In addition to and not in limitation of the immediately preceding sentences, the Company agrees to indemnify and hold the Indemnified Parties harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against, the Indemnified Parties for following any instructions or other directions upon which the Depositary is authorized to rely pursuant to the terms of the Indenture or this Lease.

If any such suit, action or proceeding is brought against the Depositary or any other Indemnified Party, the Depositary or such Indemnified Party shall, within ten (10) days of being notified of such suit, action or proceeding against it, notify the Company, in writing, and the Company shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company and approved in writing by the Depositary or such Indemnified Party (provided that such approval by the Depositary or such Indemnified Party shall not be unreasonably withheld, conditioned or delayed), the payment of all reasonable expenses of such counsel and the right of the Depositary or such Indemnified Party to participate in negotiations and to consent to settlement, which consent shall not be unreasonably withheld, conditioned or delayed. If the Depositary or such Indemnified Party is advised in a written opinion of counsel that is also addressed to the Company that there may be legal defenses available to the Depositary or such Indemnified Party which are adverse to or in conflict with

those available to the Company, or that the defenses of the Depositary or such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume or cause the assumption of the defense of the Depositary or such Indemnified Party, however, the Company shall be responsible for the reasonable fees and expenses of counsel retained by the Depositary or such Indemnified Party in assuming its own defense, provided such counsel is approved in writing by the Company.

If the Company shall have failed to assume or cause the assumption of the defense of such suit, action or proceeding or to retain counsel reasonably satisfactory to the Depositary or any Indemnified Party, the reasonable fees and expenses of counsel retained by the Depositary or such Indemnified Party shall be paid by the Company. Notwithstanding, and in addition to, any of the foregoing, the Depositary or any Indemnified Party shall have the right to employ separate counsel with respect to any such claim or in any such suit, action or proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by the Depositary or the Indemnified Party unless the employment of such counsel has been specifically authorized in writing by the Company. The Company shall not be liable for any settlement of any such action effected without its consent; but if settled with the consent of the Company or if there be a final, unappealable judgment for the plaintiff in any such action, the Company agrees to indemnify and hold harmless the Indemnified Parties other than a judgment merely confirming a settlement entered into without the written consent of the Company.

B. The obligations of the Company under this Section 5.7 shall survive any assignment or termination of this Lease, the discharge of the Indenture or the resignation or removal of the Depositary or the termination of its duties.

C. To the extent, if at all, that any provision requiring one party to indemnify, hold harmless, insure or defend another party (including such other party's employees or agents) contained herein or in any related documents is found to be within the scope of Section 56-7-1 NMSA 1978, as amended from time to time, or in any way subject to, or conditioned upon consistency with, the provisions of Section 56-7-1 NMSA 1978, as amended from time to time, for its enforceability, then such provision, regardless of whether it makes reference to this or any other limitation provision, shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents, and shall be further modified, if required by the provisions of Section 56-7-1(B) NMSA 1978, as amended from time to time. Further, notwithstanding any other term or condition of this Lease, to the extent, if at all, that any agreement, covenant or promise to indemnify another party (including such party's employees or agents) contained herein or in any related documents, is found to be within the scope of Section 56-7-2 NMSA 1978, as amended from time to time, or in any way subject to, or conditioned upon consistency with, the provisions of Section 56-7-2 NMSA 1978, as amended from time to time, for its enforceability, then regardless of whether it makes reference to this or any other limitation provision, such agreement is not intended to, and it does not, indemnify such indemnitee against loss or liability for damages arising from:

(i) the sole or concurrent negligence of such indemnitee or the agents or employees of such indemnitee;

(ii) the sole or concurrent negligence of an independent contractor who is directly responsible to such indemnitee; or

(iii) an accident that occurs in operations carried on at the direction or under the supervision of such indemnitee, an employee or representative of such indemnitee, or in accordance with methods and means specified by such indemnitee or the employees or representatives of such indemnitee.

Section 5.8. Environmental Matters. To the extent that the Leased Property shall house petroleum or any petroleum products, asbestos, urea formaldehyde foam insulation or any other chemical, material or substance, exposure to which may or could pose a health hazard, the possession and use of such materials shall be in accordance with Applicable Environmental Law, including any applicable regulations.

To the extent that the use which the Company makes or intends to make of the Leased Property shall result in the manufacture, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Leased Property, such use will be in accordance with Applicable Environmental Law. For purposes of this Lease, the terms “hazardous substance” and “release” will have the meanings specified in CERCLA, and the term “disposal” (or “disposed”) will have the meaning specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply subsequent to the effective date of such amendment, and provided further, to the extent that the laws of the State establish a meaning for “hazardous substance,” “release,” or “disposal” which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply; provided further, that the term “hazardous substance” will also include those listed in the U.S. Department of Transportation Table (49 C.F.R. 172.101) and amendments thereto from time to time.

The Company shall promptly notify the Depositary and the Issuer of any violation or an alleged material violation of any Applicable Environmental Law related to the Leased Property of which the Company becomes aware.

Section 5.9. Issuer Payment.

A. Beginning on [____, ____] 2017 and continuing annually on the first Business Day of January in each successive calendar year during the Term, the Company shall make payments in lieu of taxes (the "PILOT") to the Issuer in an amount equal to a base PILOT amount of \$17,031.56, which is calculated based on the Leased Property's 2016 real property mill rate (the "PILOT Base Amount"), plus fifty eight (58%) of any incremental increase over the PILOT Base Amount in the Leased Property's assessed real property mill levy, annualized over the stated maturity of the Bonds. The PILOT will be adjusted annually to reflect increases or decreases in the mill levy, but will remain at 58% of the amount otherwise payable. In the event that any successive calendar year during the Term yields an assessed mill levy of less than the PILOT Base amount, the Company shall pay the Issuer the PILOT Base Amount. The payments may be amended by mutual agreement of the Company and the Issuer.

B. If the Company terminates this Lease within ten (10) years of the date hereof due to (i) ceasing operations, (ii) moving the Project out of Bernalillo County, or (iii) any other voluntary act of the Company that results in the Leased Property's use being discontinued, the Company shall pay to the Issuer an amount equal to the abated property taxes less all amounts paid pursuant to Section 5.9 A. The payment shall be made within 30 days of such discontinuance.

ARTICLE VI - ASSIGNMENT, LEASING AND SELLING

Section 6.1. Assignment of Rights by the Issuer. As security for the payment of the Bond, the Issuer will assign and pledge to the Purchaser certain rights, title and interests of the Issuer in this Lease including the right to receive Basic Rent as more fully provided in Section 3.01 of the Indenture, and hereby directs the Company to make such Basic Rent payments directly to the Purchaser. The Company consents to such assignment and pledge and agrees that it will make payments directly to the Purchaser without defense or setoff by reason of any dispute between the Company and the Issuer or the Purchaser, and hereby further agrees that its obligations to make payments hereunder and to perform its other agreements contained herein are absolute and unconditional.

Section 6.2. No Other Transfer by Issuer. Except for the assignment described in Section 6.1, the Issuer will not sell, assign, transfer or convey its rights, title or interests in this Lease, or the Leased Property, or its obligations under this Lease. The parties agree that the Company will be entitled to injunctive relief and specific performance (in addition to any other remedies available to it at law or in equity) to enforce the provisions of this Section 6.2.

Section 6.3. Assignment, Lease, Encumbrance, Sale or Merger involving the Company.

A. If the Company is not in default under this Lease or the Indenture, the rights of the Company under this Lease may be assigned, and the rights of the Company in the Leased Property may be assigned, leased, subleased, mortgaged or sold as a whole or in part by the Company. No such assignment, lease, sublease, mortgage or sale will relieve the Company from liability for making payments of Rent and for the performance of its other obligations under

this Lease to the same extent as though no assignment, lease, sublease, mortgage or sale had been made, unless (i) such assignment, lease, sublease, mortgage or sale is to an affiliate (as such term is used in regulations pursuant to the Securities Exchange Act of 1934) of the Company, or (ii) such assignment is made to a person or entity having net assets or a net worth at least equal to the net assets or net worth of the Company at the time of such transaction, or (iii) with the written consent of the Issuer and the Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed. If an assignment is made to a person or entity that qualifies under subsection (i) or (ii) of this Section 6.3 A, then, in such event, the Company, as transferor, shall be relieved from all further liability under this Lease from and after the effective date of such assignment the transferee shall thereafter be the “Company” for all purposes hereunder. If a transfer is consented to by the Issuer and the Purchaser under this Section 6.3 A (iii), then, in such event, the transferee shall thereafter be the “Company” for all purposes, but the transferor shall be relieved of all further liability under this Lease from and after the effective date of such transfer only to such extent as may be set forth in such consent. To the extent required by the Purchaser, any assignee, lessee, sublessee or purchaser of all of the Company’s interest in this Lease or of the Leased Property will assume in writing the obligations of the Company under this Lease.

B. The Company will, not more than sixty (60) nor less than thirty (30) days before the effective date of any assignment, lease, sublease, mortgage, or sale described in Section 6.3 A, furnish or cause to be furnished to the Issuer and the Purchaser a true and complete copy of such proposed assignment, lease, sublease, mortgage or purchase contract, and to the extent applicable, such assumption. On the effective date of any such assignment, lease, sublease, mortgage or sale, the Company will, at the request of the Issuer or the Purchaser and at the expense of the Company, deliver to the requesting Party an opinion of counsel to the Company to the effect that such assignment, lease, sublease, mortgage or sale has been duly authorized by the Company, does not conflict with applicable federal or State law, and does not affect the status of the Project as a “project” under the Act.

Section 6.4. Company Financing Liens. The Company may from time to time grant one or more Company Financing Liens. The Issuer shall reasonably cooperate, at the expense of the Company, in connection with any such grant. In addition, the Issuer will grant such Company Financing Liens on its interest in the Leased Property as the Company may from time to time reasonably request, all at the Company’s expense, and only so long as the such Company Financing Lien does not involve any pecuniary liability or obligation of the Issuer except with respect to the Leased Property and the application of the revenues therefrom. The Issuer will also grant to the provider or providers of Company Financing such right to notice of and the right to cure any Default or Event of Default and issue to such provider or providers such estoppel certificates with respect to the Bond Documents as the Company or any such provider may from time to time reasonably request, all at the Company’s expense, and only so long as the same does not involve any pecuniary liability or obligation of the Issuer.

ARTICLE VII - EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default Defined. Each of the following events is an “Event of Default”:

A. Failure by the Company to make any Rent payment when due, and such failure continues for a period of five (5) Business Days after notice of such failure is received by the Company.

B. Any Bond Document, or any certificate or other document delivered pursuant to any Bond Document, contains a material misrepresentation by the Company, which misrepresentation continues to materially adversely affect the Purchaser or the Depositary, and the Company fails to cure the effect of such misrepresentation within thirty (30) Business Days after such party gives the Company written notice of such misrepresentation or, if the effect of such misrepresentation cannot reasonably be cured within thirty (30) Business Days, failure by the Company to commence the remedy within such period and to pursue the same diligently to completion.

C. A decree or order for relief by a court of competent jurisdiction is entered in an involuntary case under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days, or the commencement by the Company of a voluntary case under such law, or the consent by the Company either to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the taking of action by the Company to authorize or effect any of the foregoing.

D. Failure by the Company to perform any of its material obligations under this Lease or the Indenture, other than the payment of Rent, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer or the Purchaser, unless such failure cannot be remedied within thirty (30) days and the Company has instituted corrective action within thirty (30) days after such notice and diligently pursues such action until such failure is remedied.

Section 7.2. Remedies on Default. If an Event of Default occurs and is continuing, the Purchaser and only the Purchaser, as the assignee of the Issuer under the Indenture and on behalf of the Issuer, may, but is not required to, take any one or more of the following remedial steps:

A. By written notice to the Company declare all such amounts of Rent payable for the remainder of the Term as are required to provide for the Payment of the Bond to be immediately due and payable, whereupon the same will be immediately due and payable;

B. Take possession of the Leased Property without terminating this Lease and lease or sublease the Leased Property for the account of the Company, crediting against the Rent required to be paid by the Company the amounts received by the Purchaser for the account of the Issuer from any lease or sublessee;

C. Terminate this Lease, hold the Company liable for all Rent due at the effective date of termination and due until the effective date of leasing the Leased Property to another, exclude the Company from possession of the Leased Property and lease or sublease the Leased Property to another; provided, however, that such termination and exclusion will not impair any remedy granted to the Issuer or the Purchaser under this Lease;

D. Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Company under this Lease or the Indenture; or

E. Exercise any remedies provided for in the Indenture. In the enforcement of the remedies provided in this Section 7.2, the Purchaser, as the assignee of the Issuer and on behalf of the Issuer, will treat all expenses of enforcement, including, without limitation, legal, accounting and advertising fees, as Additional Payments then due and owing. As the assignee of the Issuer, the Purchaser has sole responsibility for the exercise of any remedies if an Event of Default occurs and is continuing, provided that the Issuer shall be under no obligation to exercise any remedies in the event the Purchaser fails to do so.

Section 7.3. Company To Give Notice of Default. The Company will promptly give notice to the Purchaser of the occurrence of any Event of Default of which it has actual knowledge.

Section 7.4. Default by Issuer - Limited Liability. Notwithstanding any provision or obligation to the contrary hereinbefore set forth, no provision of this Lease shall be construed so as to give rise to a pecuniary liability of the Issuer or to give rise to a charge upon the general credit or taxing powers of the Issuer. The liability of the Issuer hereunder shall be limited to its interest in this Lease, and all other related documents and collateral and the lien of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer, nor shall the Issuer be liable on any obligation so incurred. The Issuer does not assume general liability for the repayment of the Bond or for the costs, fees, penalties, taxes, interest, omissions, charges, insurance or any other payments recited herein, and shall be obligated to pay the same only out of the amounts payable by the Company hereunder. The Issuer shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Company if a default shall occur hereunder.

Section 7.5. Issuer Remedial Action. Notwithstanding any other provision of this Lease or the Indenture for the contrary, the Issuer may take whatever action at law or in equity is necessary to enforce the performance of the obligations of the Company under Section 5.9. The Issuer's rights to enforce the Company's obligations under Section 5.9 are not assigned to the Purchaser under the Indenture.

ARTICLE VIII - PREPAYMENTS

Section 8.1. Prepayments. The Company may at any time (including after the occurrence and during the continuance of an Event of Default) and for any reason cause all or any portion of the Bond to be redeemed in accordance with the provisions of the Indenture by

giving notice of such redemption to the Issuer, the Depositary and the Purchaser not less than five (5) days before the redemption date. Such notice will specify the redemption date and the principal amount of the Bond to be redeemed. On the redemption date the Company will prepay the Rent in an amount equal to such principal amount to be redeemed plus accrued interest on such principal amount to the redemption date by payment of such amounts to the Purchaser.

ARTICLE IX - PURCHASE OF LEASED PROPERTY

Section 9.1. Purchase of Leased Property. The Company will purchase, and the Issuer will sell, the Leased Property for \$1.00 at the expiration or early termination of this Lease and upon Payment of the Bond. The Company will give notice to the Issuer specifying the date of closing such purchase, which will be not less than five (5) nor more than ninety (90) days from the date of such notice. At the closing of such purchase, the Issuer will, upon receipt of the purchase price, deliver to the Company a deed, bill of sale, or other appropriate documents conveying to the Company title to the Leased Property, as the same exists at the time of such purchase, subject only to: (i) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (ii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Lease; and (iii) Permitted Liens other than the Indenture and this Lease. The Company may purchase the Leased Property whether or not a Default or an Event of Default has occurred and is continuing.

ARTICLE X - MISCELLANEOUS

Section 10.1. Incorporation of Indenture Provisions. The provisions of Sections 11.01, 11.02, 11.03, 11.05 and 11.06 of the Indenture are incorporated in this Lease.

Section 10.2. Amendments. This Lease may be amended or modified only as provided in the Indenture.

Section 10.3. No Pecuniary Liability of Issuer. No agreements or provisions contained herein nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of the proceeds of the Bond or the issuance, sale and delivery of the Bond will give rise to any pecuniary liability of the Issuer or constitute a charge against the Issuer's general credit, or will obligate the Issuer financially in any way, except with respect to the funds available hereunder or under the Indenture and pledged to the payment of the Bond and its application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements herein or in any document executed by the Issuer in connection with the Bond will subject the Issuer to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available hereunder or under the Indenture and pledged to the payment of the Bond and its application as provided under the Indenture. None of the provisions of the Lease will require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder unless it will first have been adequately indemnified to its reasonable satisfaction against the cost, expense or liability which might be incurred thereby. Nothing herein will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition,

covenant or agreement herein or in the Indenture; provided, that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available hereunder or under the Indenture and pledged to the payment of the Bond.

Section 10.4. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Issuer, the Company, and their respective successors and assigns.

Section 10.5. Severability. If any section, paragraph, clause or provision of this Lease shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Lease.

Section 10.6. Recording. This Lease, the Indenture and every assignment and modification hereof, or an appropriate and sufficient memorandum thereof, shall be recorded in the office of the County Clerk of Bernalillo County, New Mexico. This Lease as originally executed or an appropriate and sufficient memorandum thereof shall be so recorded before the recordation of the Indenture.

Section 10.7. No Waiver. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

Section 10.8. Applicable Law. This Lease will be governed by and construed in accordance with the laws of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico, without regard or effect given to conflict of laws or rules which would require the application of the laws or rules of any other jurisdiction.

Section 10.9. Non-Merger. The provisions of this Lease shall survive the conveyance of the Leased Property to the Issuer, the reconveyance of the Leased Property to the Company, and all other performances hereunder, and shall not be deemed merged in any deed, bill of sale, or other instrument or document delivered hereunder.

Section 10.10. Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which so executed and delivered will constitute an original and all together will constitute but one and the same instrument.

Dated as of July 1, 2017.

BERNALILLO COUNTY, NEW MEXICO

By: _____
Chair of the Board of County Commissioners

(SEAL)

Attest:

County Clerk

VILLAGE @ LA ORILLA, LLC

By: _____
Title:

Attest:

Title:

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

 This instrument was acknowledged before me on June _____, 2017, by Debbie O'Malley, Chair of the Board of County Commissioners of Bernalillo County, New Mexico.

Notary Public

My Commission expires:

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

 This instrument was acknowledged before me on June _____, 2017, by Phil Lindborg,
Manager of Village @ La Orilla, LLC, a New Mexico limited liability company.

Notary Public

My Commission expires:

EXHIBIT A

DESCRIPTION OF LEASED PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF, STATE OF AND IS DESCRIBED AS FOLLOWS:

101206233750110115 TR B-2 PLAT OF TRACTS B-1 THROUGH B-4 LA ORILLA ESTATES

101206231451810116 TR B-1 PLAT OF TRACTS B-1 THROUGH B-4 LA ORILLA ESTATES

101206236752210117 TR B-4 PLAT OF TRACTS B-1 THROUGH B-4 LA ORILLA ESTATES

101206236350110118 TR B-3 PLAT OF TRACTS B-1 THROUGH B-4 LA ORILLA ESTATES

EXHIBIT B

PERMITTED LIENS

[DESCRIPTION OF PERMITTED LIENS]